



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, CNC, MNR, & FF

Introduction

This hearing dealt with cross applications by the parties. The tenant filed an application seeking to have a notice to end the tenancy issued by the landlord set aside. The landlord filed an application seeking an Order of Possession and a monetary claim due to the tenant's failure to pay rent.

Issues(s) to be Decided

Has the tenant breached the tenancy agreement, *Act* or regulations entitling the landlord to an Order of Possession and a monetary claim related to unpaid rent?

Background and Evidence

This tenancy began on May 1, 2010 for the monthly rent of \$700.00 and a \$350.00 security deposit was paid on April 30, 2010.

On August 21, 2010 the tenant was served with a notice to end tenancy. This notice was a 10 day Notice to End Tenancy Due to Unpaid Rent but it had been modified by the landlord to give notice to end the tenancy early due to a breach of the tenancy agreement. Included with the notice was a letter from the landlord indicating that the tenant had 13 days to vacate the rental unit due to breach of the crime free addendum to the tenancy agreement. The tenant filed an application for Dispute Resolution to dispute the landlord's attempt to end the tenancy.

On September 9, 2010 the tenant was served with another 10 day Notice to End Tenancy Due to Unpaid Rent. The tenant did not realize that she had to file another application for Dispute Resolution to set aside this second notice. This notice was properly filled out and issued in accordance with section 46 of the *Act*.

The tenant stated that she had a portion of the rent paid to the owner of the property and attempted to pay the second half of the rent to the landlord's agents on September

28, 2010 when the agents returned from vacation. The landlord's agents told the tenant to return the next day as they were still on vacation. On September 29, 2010 the tenant stated that the landlord's agents would not accept the rent. The landlord's agents stated that they would not accept half the month's rent which is what the tenant was attempting to pay on September 29, 2010. The landlord's agents stated that they spoke with the owner but he denied receiving any money from the tenant.

The tenant did not pay the rent in October as she understood that the landlord's agents would not accept any rent from her. The tenant stated that she believed that it would all be resolved at this Dispute Resolution hearing. The tenant confirmed in the hearing that she did not have the two month's outstanding rent available to pay the landlord. The tenant stated that she intended to vacate the rental unit as of October 31, 2010.

Analysis

I allow the tenant's application for Dispute Resolution cancelling the notice to end tenancy, as the notice to end tenancy served upon her by the landlord is not enforceable. The landlord attempted to alter a 10 day Notice to End Tenancy Due to Unpaid rent to serve as 13 day eviction based on the crime free addendum to the tenancy agreement. The landlord's attempt to create their own notice to end tenancy does comply with the form or content of a notice to end tenancy as required by section 52 of the *Act*.

I explained to the landlord that the *Act* only allows a landlord to end a tenancy for cause by issuing a one month Notice to End Tenancy pursuant to section 47 of the *Act* or by an application for an early end to the tenancy pursuant to section 56 of the *Act*. I explained that the landlord's actions were contrary to the law and very misleading as they used a notice to end tenancy for unpaid rent in an attempt to end the tenancy for another reason.

The landlord issued a second 10 Day Notice to End Tenancy Due to Unpaid Rent, except this time for the proper reasons under the *Act*. I am satisfied that the tenant failed to understand that this second notice was valid, due to the landlord's misuse of this type of notice approximately three weeks earlier. The tenant had already filed an application for Dispute Resolution to dispute this type of notice. On this basis, I would normally set aside the second 10 day Notice to End Tenancy being satisfied that the tenant was misled and did not understand the landlord's intent or her rights.

However, during the hearing it was established that the tenant has failed to pay the rent owed for both September and October 2010. The tenant acknowledged that she did not

pay the rent owed and did not have the money available to pay the landlord. The tenant stated she was intending to vacate the unit by October 31, 2010.

Based on the September 9, 2010 10 day Notice to End Tenancy Due to Unpaid Rent, I grant the landlord an Order of Possession effective **October 31, 2010 at 1:00 p.m.** The landlord has two weeks to attempt to find a new tenant for November 1, 2010. I also grant the landlord a monetary Order for the sum of \$1,400.00 comprised of the outstanding rent for September and October 2010. The tenant did not provide any compelling evidence to support her claim that she paid a portion of the rent owed for September 2010.

I deny the landlord's request to recover the \$50.00 filing fee from the tenant. I find that the landlord has abused legal notices under the *Act* and this application would not have been successful if the tenant had the funds to pay the outstanding rent.

Conclusion

I find that the landlord is entitled to an Order of Possession of the rental unit effective **October 31, 2010 at 1:00 p.m.** after it has been served upon the tenant. This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim due to breach of the tenancy agreement by the tenant for the sum of **\$1,400.00**. This Order may be served on the tenant. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 15, 2010.

Dispute Resolution Officer